**IN THE HIGH COURT OF BOMBAY AT GOA**

**FIRST APPEAL NO. 209 OF 2002**

1. Shri K. N. Lahiri
since deceased represented
by Legal heirs:
1(a) Shri Avinash Lahiri
1(b) Shri Siddhartha Lahiri
through Power of Attorney
Mrs. Shamim Lahiri
1(c) Shri Arindam Lahiri

All resident of 26,
Lower Dabolim,
Chicalim-Goa.

2. Manasi Lahiri
Resident of 26,
Lower Dabolim,
Chicalim-Goa 403 711. ... Appellants

versus

1. Deputy Collector & SDO,
Quepem, Goa.

2. Deputy Conservator
of Forests wild life
and Parks Div.
Junta House, Panaji-Goa. ... Respondents

Mr. M. S. Usgaonkar, Senior Advocate with Mr. Sudin Usgaonkar, Advocate for the Appellants.

Mr. S. S. Kantak, Advocate General with Ms. L. Dharwadkar, Additional Government Advocate for the Respondents.

**CORAM : R. M. LODHA &**
**N. A. BRITTO, JJ.**

**DATE : 18TH OCTOBER,2005.**

**ORAL JUDGMENT(PER R. M. LODHA, J.)**

The legal representatives of the expropriated owner (hereinafter to be referred as 'the claimants') are in appeal against the Judgment and Award dated 18-6-2001 passed by the IInd Additional District Judge, South Goa, Margao, whereby the said Court fixed the market value of the acquired land at the rate of Rs.1.30/- per sq. metre(the rate at which the offer was made by the Land Acquisition Officer).

2. The claimants owned land admeasuring 3,80,600 sq. metres bearing survey nos.8/1, 12/1, 13/1, 14/1, 15/1 and 17/1 situate at Village Caranzol, Taluka Sanguem. The said land was purchased by them vide two Sale Deeds dated 15-3-1985 and 10-5-1985 for a consideration of Rs.5,00,000/-(Rupees Five Lacs). The Government of Goa issued the Notification under Section 4(1) of the Land Acquisition Act which was published in the Official Gazette on 04-02-1988 whereby the aforesaid land was sought to be acquired for expansion of Mollem Wild Life

Sanctuary. Upon conclusion of the acquisition proceedings, the Land Acquisition Officer offered the compensation to the claimants at the rate of Rs.1.30 per sq. metre for compulsory acquisition of their land admeasuring 3,80,600 sq. metres. The Land Acquisition Officer also offered compensation towards the value of trees, structures, well and the pump-house. The claimants accepted the compensation offered by the Land Acquisition Officer under protest and sought reference for determination of market value of their acquired land. The matter, accordingly, was referred to the Court of District Judge, Margao, by the Land Acquisition Officer which was later on transferred to the Court of IInd Additional District Court, Margao for hearing and disposal.

3. Before the Reference Court, the claimants claimed compensation for compulsory acquisition of their land at the rate of Rs.25/- per sq. metre. Additionally, they claimed compensation for an area admeasuring 11,190 sq. metres as for the said area no compensation was awarded by the Land Acquisition Officer. They also claimed higher compensation for the well, structure, trees and saplings. In support of their case,

the claimants examined Arindom Lahiri(AW1), S.Bhende(AW2) and Raguvir Dattarao Pikle(AW3). The claimants produced the Sale Deed dated 24-4-1981(Exh.AW1/A) and the Valuation Report(Exh.AW2/A).

4. In rebuttal, on behalf of the respondents, Prakash Kamblu(RW.1) was examined.

5. The Reference Court held that the claimants were not entitled to compensation at the rate of Rs.25/- per sq. metre. However, the Reference Court accepted the claimants' case that they were entitled to compensation for the land admeasuring 11,190 sq. metres for which the compensation was not awarded by the Land Acquisition Officer. The Reference Court held that the market value of the acquired land on the date of publication of Notification under Section 4(1) was Rs.1.30 per sq. metre. As already indicated above, against the Judgment and Award dated 18-6-2001 whereby the Reference Court fixed the market rate of the acquired land at the rate of Rs.1.30 per sq. metre, the present Appeal has been preferred.

6. We heard Mr. M. S. Usgaonkar, the learned Senior Counsel for the appellants and Mr. S. S. Kantak, the learned Advocate General for the respondents.

7. Mr. M. S. Usgaonkar, the learned Senior Counsel for the appellants contended that the claimants produced the Sale Deed dated 24-4-1981 pertaining to the sale of an area of 1507.5 sq. metres at the rate of Rs.18/- per sq. metre. The said land was close to the subject land. The said Sale Deed indicated the market value of the developed land in the year 1981 at Rs.18/- per sq. metre. The claimants purchased the land in the year 1985 and made improvements thereon. The land was fit for industrial complex. Relying upon the evidence of the valuer, the learned Senior Counsel contended that the acquired land was serviced by various facilities such as electricity, abundant water supply and motorable developed road and, therefore, the acquired land had potential for being developed into industrial complex. There was already Kanana Agricultural Produce Industry operating in the nearby land. Thus, the learned Senior Counsel submitted that the market value fixed at the rate of Rs.1.30 per sq. metre was inadequate and deserves to be enhanced.

8. On the other hand, Mr. S. S. Kantak, the learned Advocate General supported the Judgment of the Reference Court.

9. We reflected over the submissions of the learned Senior Counsel and the learned Advocate General appearing for the parties and considered the evidence on record.

10. It is admitted case of the claimants that the acquired land admeasuring 3,80,600 sq. metres was purchased by the claimants vide two Sale Deeds; (one) Sale Deed dated 15-3-1985 and (two) Sale Deed dated 10-5-1985 for the consideration of about Rs.5,00,000/-. At the time of the purchase of the said land, there were two houses and one pump-house in the said land. The houses and the pump-house were made of laterite stones. There were also trees, drains, paths and electricity in the property at the time of purchase. The fact that the acquired land comprising of land, two houses, pump-house, trees etc. itself was purchased in the year 1985 by the claimants for a consideration of Rs.5,00,000/-, the reliance placed by them on the Sale Deed dated 24-4-1981 concerning sale of a plot of land admeasuring 1507 sq. metres was misconceived and of no help to support

the case of the claimants for finding the market value of the acquired land as on 04-02-1988 when the Notification under Section 4(1) was published in the Official Gazette. The sale of the acquired land in the year 1985 for a consideration of Rs.5,00,000/- by the erstwhile owners to the claimants was indisputably a genuine transaction - from a willing seller to the willing purchaser. Obviously, therefore, in the year 1985, the market value of the acquired land alongwith the structures, pump-house, trees etc. has to be taken at the rate of Rs.5,00,000/-. The market value of the land, thus, in the year 1985 comes to Rs.1.00 per sq. metre. The question then arises about the market value of the acquired land on the date of Notification published on 04-02-1988. AW.1 in his deposition has not stated a word about the improvement of the land done by his father after the purchase. His deposition is that the market is about 3 kms. from the acquired land; the electricity passes through their property; they were operating electric pumps in their property; the Dudhsagar Water Fall is about 3 kms. from their land; there were schools at a distance of about 3 to 4 kms. and the National Highway is at a distance of 6 kms. This was the exact position when the land was purchased by the claimants in the year 1985. The other evidence is that of Valuer Sakaram Bhende(AW.2). He, of course, has stated about the development done by the claimants but his evidence is of not much use as admittedly he visited the acquired property for the first time on 13-2-1991

i.e., almost 3 years after the publication of Notification under Section 4(1). His deposition cannot be relied upon to find out the correct status of the acquired land on the date of publication of the Notification under Section 4(1) because he had not seen the land proximate to that date. Moreover, his deposition about improvement on the acquired land by the claimants does not get support from the son of the claimants. AW2 can be styled as 'more Pious than Pope' and his evidence cannot be accepted in holding that after the purchase of the subject land by the claimants in the year 1985, substantial improvements were made over the land by them resulting in perceptible appreciation.

11. The Land Acquisition Officer while making the offer of compensation at the rate of Rs.1.30 per sq. metre has taken into consideration the increase of 10% of the cost of land per year. In the year 1985, the claimants purchased the land at the rate of Re.1.00 per sq. metre roughly. After giving increase of 10% per year, the market value fixed at Rs.1.30 per sq. metre is not found to be inadequate. It cannot be said that the market value at the rate of Rs.1.30 per sq. metre does not reflect the true market value of the acquired land on the date of publication of Notification under Section 4(1). Looked at from another angle it would be seen that the claimants purchased the acquired land along with structures,

pump-house, trees etc. for a total consideration of Rs.5,00,000/-. That was in the months of March and May, 1985. For the acquisition of that land by the Notification published on 04-02-1998, the claimants under the Award of the Reference Court gets about Rs.7,31,350/-. In other words, in a span of less than 3 years, the claimants have been able to get an appreciation of about Rs.2,31,650(almost 50% increase) of the said land. The market value at the rate of Rs.1.30 per sq. metre is fairly realistic and cannot be said to suffer from any legal infirmity or factual error.

12. The Judgment and Award passed by the Reference Court, therefore, does not call for any interference. First Appeal is dismissed with no order as to costs.

**R. M. LODHA, J.**

**N. A. BRITTO, J.**

**RD.**